

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH McMULLIN,

Defendant.

Criminal Case No. 11-20345

SENIOR U.S. DISTRICT JUDGE
ARTHUR J. TARNOW

U.S. MAGISTRATE JUDGE
R. STEVEN WHALEN

**ORDER GRANTING MOTION [89], APPOINTING COUNSEL, SCHEDULING BRIEFING,
ORDERING PRODUCTION OF RECORDS, AND SETTING A HEARING FOR
SEPTEMBER 30, 2020, AT 1:00 P.M.**

On September 27, 2012, Joseph McMullin was sentenced to fifteen years in prison after pleading guilty to being a Felon in Possession of a Firearm and an Armed Career Criminal, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1). (ECF No. 44, PageID.166.) McMullin is currently incarcerated at FCI Butner Medium II and is scheduled for release on April 5, 2024. *Find an Inmate*, FED. BUREAU PRISONS, https://www.bop.gov/mobile/find_inmate/index.jsp (BOP Register Number 45825-039) (last visited Sept. 3, 2020).

On August 17, 2020, McMullin, proceeding *pro se*, filed a Motion for Appointment of Counsel and Production of Medical Records [89] and a Motion for

Compassionate Release Under 18 U.S.C. § 3582(c)(1)(A) [90]. These were in addition to McMullin's earlier *pro se* Motion Pursuant to the First Step Act [91], which he filed August 6, 2020. In order to satisfy the exhaustion requirement of § 3582(c)(1)(A), McMullin will be required to provide the Court with evidence that he has requested compassionate release under § 3582, rather than home confinement under 18 U.S.C. § 3624(c)(2). *See United States v. Desjardins-Racine*, No. 20-1530, 2020 U.S. App. LEXIS 26182, *4 (6th Cir. Aug 18, 2020).

To aid in the timely resolution of his Motion [90], the Court hereby appoints the Federal Community Defender to represent McMullin. If counsel for McMullin possesses any records of administrative request(s) for release by McMullin or response(s) thereto by the BOP, it shall provide documentation to the United States. The United States shall also provide McMullin's counsel with the following records held by the Bureau of Prisons ("BOP"): any administrative request(s) for release by McMullin and response(s) thereto by the BOP; McMullin's medical records, disciplinary records, educational records, and program records from his time in federal custody; and any evaluations McMullin may have received for his participation in BOP programs or educational courses. These records should be provided no later than September 18, 2020 and filed along with the briefs.

Both McMullin and the United States shall submit concurrent briefing no later than September 25, 2020. Concurrent responses may be filed no later than September

28, 2020. The Court shall hold a video hearing on McMullin's Motion for Compassionate Release [90] on Wednesday, September 30, at 1:00 P.M. McMullin's Motion Pursuant to the First Step Act [91] will be held in abeyance pending the resolution of his Motion for Compassionate Release [90].

Accordingly,

IT IS ORDERED that McMullin's Motion for Appointment of Counsel and Production of Medical Records [89] is **GRANTED**.

IT IS FURTHER ORDERED that the Federal Community Defender be **APPOINTED** to represent Joseph McMullin on his petition for compassionate release.

IT IS FURTHER ORDERED that both parties file concurrent briefing on this petition no later than **September 25, 2020**. Supplemental records shall accompany the briefs. Concurrent responses may be filed no later than **September 28, 2020**.

IT IS FURTHER ORDERED that if counsel for McMullin possesses any records of administrative request(s) for release by McMullin or response(s) thereto by the BOP, it shall provide documentation to the United States no later than **September 21, 2020**.

IT IS FURTHER ORDERED that the United States provide McMullin's counsel with the following BOP records no later than **September 21, 2020**: any

administrative request(s) for release by McMullin and response(s) thereto by the BOP; McMullin's medical records, disciplinary records, educational records, and program records from his time in federal custody; and any evaluations McMullin may have received for his participation in BOP programs or educational courses.

IT IS FURTHER ORDERED that a video hearing be held on this petition on **Wednesday, September 30, 2020, at 1:00 P.M.** Counsel will receive a Zoom invitation by email after approval from the Court's IT Department.

IT IS FURTHER ORDERED that the Clerk shall forward a Zoom invitation to the appropriate BOP authorities at FCI Butner Medium II. The BOP shall produce Joseph McMullin (#45825-039) **by video** at least thirty minutes prior to the hearing so that he may confer privately with his attorney from 12:30 P.M. until the start of the hearing at 1:00 P.M.

IT IS FURTHER ORDERED that McMullin's Motion Pursuant to the First Step Act [91] be held in abeyance pending the resolution of his Motion for Compassionate Release [90].

SO ORDERED.

Dated: September 15, 2020

s/Arthur J. Tarnow
Arthur J. Tarnow
Senior United States District Judge